

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FREDDIE TRIPPLETT,

Case No: 16-CV-12503

Plaintiff,

Hon. Bernard A. Friedman

v.

Mag. Anthony P. Patti

HORST KUSSMAN and ALMA
KUSSMAN

Defendants.

MICHAEL J. MORSE (P46895)
DEREK J. BRACKON (P61690)
Mike Morse Law Firm
Attorneys for Plaintiff
24901 Northwestern Hwy., Ste. 700,
Southfield, MI 48075
(248) 350-9050

MARK SHREVE (P29149)
Garan Lucow Miller, P.C.
Attorneys for Horst & Alma Kussman
1111 W. Long Lake Rd., Ste. 300,
Troy, MI 48098
(248) 641-7600

NOTICE OF COMPLIANCE WITH LOCAL RULE 7.1

Please note that pursuant to Local Rule 7.1, Plaintiff's counsel sought the concurrence of Defendants' counsel in the relief requested in Plaintiff's Motion to Compel Defendants Horst and Alma Kussman's Depositions on several occasions, but most recently on January 27, 2017.

PROOF OF SERVICE

The undersigned certifies that on 3/15/17, she served a copy of the foregoing document upon each of the attorneys of record, at the address listed on the caption, via:

US Mail Hand Delivery
 Facsimile Federal Express
 E-Mail EFILE/ESERVICE

/s/ Ashley R. Yaquinto

Ashley R. Yaquinto

Respectfully Submitted:

MIKE MORSE LAW FIRM
Attorney for Plaintiff

/s/ Derek J. Brackon

**Michael J. Morse P-46895
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24901 Northwestern Hwy., Suite 700
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(248) 350-9050

Date: March 15, 2017

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NOTICE OF HEARING

PLEASE TAKE NOTICE that the attached Plaintiff's Motion to Compel Defendants Horst and Alma Kussman's Depositions in the above captioned matter will be brought on for hearing before this Court at a date and time to be set by this Court.

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PLAINTIFF'S MOTION TO COMPEL THE DEPOSITIONS OF DEFENDANTS
HORST AND ALMA KUSSMAN

NOW COMES Plaintiff, Freddie Triplett, by and through his attorneys, the Mike Morse Law Firm, and for his Motion to Compel the Depositions of Defendants Horst and Alma Kussman, hereby states as follows:

1. On July 28, 2015, Plaintiff Freddie Triplett filed his complaint in the Wayne County Circuit Court alleging injuries sustained in a motor-vehicle collision on January 3, 2015 in the City of Romulus, State of Michigan as the result of the negligent actions or inactions of Defendants Horst and Alma Kussman.

2. The PIP claim against Auto Club was severed from the third-party tort claim on June 21, 2016 per the order of the Wayne County Circuit Court. A notice of removal for the third-

party action against Defendants Horst and Alma Kussman (residents of Canada), was filed on July 1, 2016. The removal petition was subsequently granted and the third-party action is now pending before this Court.

3. On November 24, 2015, Plaintiff noticed the depositions of Defendants for January 4, 2015. (**Exhibit 1**).

4. The deposition was then rescheduled and re-noticed for June 14, 2016 and was subsequently cancelled by Defendants. (**Exhibit 1**).

5. On January 27, 2017, Plaintiff's counsel asked Mr. Shreve for dates to schedule Defendants depositions. To date, there has been no response. (**Exhibit 1**).

6. Mr. Shreve has been exceedingly uncooperative in the scheduling of his clients' depositions.

7. Pursuant to Local Rule 37.1, Plaintiff's counsel has made diligent efforts to contact Mr. Shreve and schedule the video depositions of his clients' with no response from Mr. Shreve.

8. Pursuant to the Federal Rules of Civil Procedure, Plaintiff is entitled to the deposition testimony of Defendants Horst and Alma Kussman.

9. Pursuant to Fed. R. Civ. P. 26(b), “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.”

WHEREFORE, Plaintiff Freddie Triplett pray this Honorable Court GRANT their Motion to Compel the Depositions of Defendants Horst and Alma Kussman and enter his proposed order compelling Defendants to appear at their counsel's office at 1111 W. Long Lake Road, Suite 300, Troy, MI 48098 for their depositions within fourteen days from the date of entry. (**Exhibit 2**).

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/s/ Ashley R. Yaquinto

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Attorney for Plaintiff

/s/ Derek J. Brackon

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BRIEF IN SUPPORT

STATEMENT OF ISSUES

1. Should Defendants Horst and Alma Kussman be compelled to appear for a deposition as Plaintiff's counsel has attempted to schedule their depositions numerous times with Mr. Shreve with no response?

Plaintiff's Answer: Yes.

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FACTS

Plaintiff properly noticed the depositions of Defendants Horst and Alma Kussman pursuant to Michigan Court Rules on November 24, 2015 for January 4, 2016 and again for June 14, 2016. This case was initially filed in the Wayne County Circuit Court and is now pending in this Federal District Court. The depositions did not commence on those dates. Since then, Plaintiff's counsel has contacted Mr. Shreve numerous times in an attempt to reschedule these depositions with no response from Mr. Shreve. Plaintiff is entitled to the video depositions of Defendants in this matter. Instead of arbitrarily noticing their depositions, Plaintiff has attempted to work with Defense counsel to mutually schedule them, but this is not possible without a response from Mr. Shreve.

WHEREFORE, Plaintiff Freddie Triplett pray this Honorable Court GRANT their Motion to Compel the Depositions of Defendants Horst and Alma Kussman and enter his proposed order compelling Defendants to appear at their counsel's office at 1111 W. Long Lake Road, Suite 300, Troy, MI 48098 for their depositions within fourteen days from the date of entry. (**Exhibit 2**).

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| <p>The undersigned certifies that on <u>3/15/17</u>, she served a copy of the foregoing document upon each of the attorneys of record, at the address listed on the caption, via:</p> <table border="0" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;"><input type="checkbox"/> US Mail</td> <td style="width: 33%;"><input type="checkbox"/> Hand Delivery</td> <td style="width: 33%;"><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> Facsimile</td> <td><input type="checkbox"/> Federal Express</td> <td><input type="checkbox"/></td> </tr> <tr> <td><input type="checkbox"/> E-Mail</td> <td><input checked="" type="checkbox"/> XX EFIL/EFILE/ESERVICE</td> <td><input type="checkbox"/></td> </tr> </table> <p style="text-align: center;"><u>/s/ Ashley R. Yaquinto</u></p> <hr/> <p style="text-align: center;">Ashley R. Yaquinto</p> | | | <input type="checkbox"/> US Mail | <input type="checkbox"/> Hand Delivery | <input type="checkbox"/> | <input type="checkbox"/> Facsimile | <input type="checkbox"/> Federal Express | <input type="checkbox"/> | <input type="checkbox"/> E-Mail | <input checked="" type="checkbox"/> XX EFIL/EFILE/ESERVICE | <input type="checkbox"/> |
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